

BRB No. 91-2129 BLA

ROBERT MORELOCK)

)
Claimant-Petitioner)

)
v.)

)
E & C COAL COMPANY)
) DATE ISSUED:
Employer-Respondent)

)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Glenn R. Lawrence, Administrative Law Judge, United States Department of Labor.

Vernon M. Williams (Wolfe & Farmer), Norton, Virginia, for claimant.

Patricia T. Gonsalves (Howe, Anderson & Steyer), Washington, D.C., for employer.

Before: STAGE, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (90-BLA-1821) of Administrative Law Judge Glenn R. Lawrence denying benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 et seq. (the Act). Claimant filed his first claim for benefits on January 24, 1980 and the claim was denied on September 3, 1980. Claimant filed a second claim for benefits on January 4, 1990 and the administrative law judge considered it pursuant to 20 C.F.R. Part 718. The administrative law judge found that claimant established twenty-three years of coal mine employment and then determined that the claim was not barred as a duplicate claim as claimant

established a material change in conditions pursuant to 20 C.F.R. §725.309. The administrative law judge further found that claimant established the existence of pneumoconiosis which arose out of his coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203. The administrative law judge then found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in

weighing the medical opinion evidence of record, particularly the opinion of Dr. Nash, pursuant to 20 C.F.R. §718.204(c)(4). Employer responds in support of the administrative law judge's Decision and Order denying benefits and the Director, Office of Workers' Compensation Programs, has chosen not to respond in this case.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

After careful consideration of the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that any error therein is harmless. The administrative law judge on this record properly found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(c). In making this finding, the administrative law judge permissibly accorded Dr. Nash's opinion, that claimant is totally disabled, less weight as he based his opinion on erroneous regulatory values when interpreting the results of claimant's pulmonary function study. See Claimant's Exhibit 2; 20 C.F.R. §718.204(c)(1). The administrative law judge further permissibly found the opinions of Drs. Paranthaman and Byers, that claimant is not totally disabled, to be well supported and to outweigh the opinion of Dr. Nash that claimant is totally disabled. In making this finding, the administrative law judge stated that Dr. Nash based his opinion on one qualifying value of a pulmonary function study while Drs. Paranthaman and Byers based their opinions on several normal studies. See Decision and Order at 10-11; Lafferty v. Cannelton Industries, Inc., 12 BLR 1-190 (1989). As Dr. Nash was the only physician to diagnose total disability and as the administrative law judge permissibly accorded his opinion less weight, the evidence has failed to establish total disability pursuant to 20 C.F.R. §718.204(c)(4). Consequently, as the administrative law judge's findings and inferences are supported by substantial evidence, and in light of the fact that the Board may not reweigh the evidence or substitute its own inferences on appeal, the administrative law judge's findings at 20 C.F.R. §718.204(c)(4) are affirmed. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY J. STAGE, Chief
Administrative Appeals Judge

ROY P. SMITH,
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge